

State of Nevada

Department of Business & Industry

Real Estate Division

Common-Interest Communities and Condominium Hotels Program





An Overview of HOA Living

Disclaimer

This is a general education class based on NRS 116 and related laws and regulations. It is not intended as a legal opinion or to provide legal advice. If you feel that the associations governing documents or NRS 116 statutes have been violated you can file a claim with the Ombudsman office



Learning Objectives

- ▶ Upon completion of this class, participants will have a basic understanding of :
 - HOA Living
 - The roles and responsibilities of:
 - The executive board and its officers
 - Units' owners
 - Community Managers
 - Reserve Study Specialists
 - The HOA's Governing Documents
 - Various laws affecting HOAs



HOA Living

- ▶ An HOA is...
 - A self-governing organization of homeowners
 - Defined and explained in law (NRS 116)
 - Also known as a common-interest community
- ▶ An HOA provides...
 - A desirable lifestyle
 - Predictable community standards
 - Common areas/amenities for owners
 - Potential for long-term asset appreciation



In Nevada...

- ▶ Approximately
 - 3,052 Associations
 - 507,454 homes
 - 1.2 – 1.5 million people
 - 79% in Southern Nevada, primarily in Clark County
 - 19% in Northern Nevada, primarily in Washoe and Douglas Counties and Carson City area
 - 2% in rural areas



Homeowners Associations

▶ Key Features

- Shared common elements, lifestyle, standards, rules
- Membership fees (assessments)
- Penalties for non compliance (fines)
- Preserve and enhance value
- Unique governance

Homeowners Association Goals

- ▶ Protect, maintain and enhance the assets of the association – the common elements
- ▶ Maintain a fiscally sound and ethical business
- ▶ Ensure compliance with the governing documents and NRS 116



Common-Interest Ownership

- ▶ The Uniform Common-Interest Ownership Act (Uniform Act) was passed into law by the Nevada Legislature in 1991 and became effective on January 1, 1992.
- ▶ The Legislature sought to provide statutory guidance to Common-Interest Communities throughout the state of Nevada.
- ▶ The Uniform Act sets forth certain legal guidelines that define the relationship between the homeowner's association, its members and third persons.
- ▶ The Uniform Act is continually being amended as the Legislature attempts to create a body of law governing Common-Interest Communities



THE PEOPLE

The Executive Board



Executive Board

- ▶ Elected by homeowners to manage the business affairs of the association
- ▶ Must be an owner in good standing and disclose any potential or actual conflicts of interest
- ▶ Serve w/o compensation—cannot provide goods or services to the association
- ▶ Maximum term – 3 years
 - May be elected to successive terms
- ▶ Subject to recall with or without cause
 - Petition signed by 10% of owners
 - At least 35% AND a majority of votes cast in support



Executive Board

▶ Fiduciary Duty

- Act in the best interest of the association.
- Members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. NRS 116.3103
- Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association NAC 116.405



Executive Board

- ▶ Business–judgment rule
 - Would an ordinarily prudent person make a similar decision under similar circumstances?
- ▶ Duty of Care
 - Exercise ordinary and reasonable care
 - Identify risks and adopt policies to prevent harm
 - Failure to act may be a breach
- ▶ Disclosure
 - Disclose any and all potential/actual conflicts of interest
 - A director cannot provide paid services to the association
 - Disclose relationships with potential providers
 - Do not accept gifts, rewards, incentives, gratuities



Board Member Meetings

- ▶ Must meet once every quarter, not less than once every 100 days
- ▶ Meetings must be open to owners
 - Except for limited purposes
- ▶ Meeting agenda available before the meeting
 - Action items clearly noted
- ▶ Owners opportunity to speak
 - Start of meeting – limited to agenda items
 - End of meeting – open to any association issue
- ▶ Meetings must be audio-recorded
- ▶ Minutes must be taken



Executive Board Meetings

▶ Closed (Executive) Session NRS 116.31085

- Consult w/legal counsel
 - Proposed or pending litigation
- Review performance of CM or employee
- Violation hearing
 - May be open if requested by homeowner
- Construction penalties

*****may not** meet in executive session to open or consider bids for an association project



Executive Board Officers

- ▶ Number and titles defined in bylaws
- ▶ Elected by the board
- ▶ Assigned to perform specific tasks
- ▶ Officers need not be owners if governing documents allow



Executive Board Officers

- ▶ President–the CEO
 - Chairs meetings, signs documents, serves as the “face” of the association
- ▶ Secretary –the custodian of records
 - Takes the meeting minutes, maintains and distributes association records
- ▶ Treasurer – the financial manager
 - Prepares and distributes financial statements, manages fiscal affairs
- ▶ Others
 - Vice President, Assistant Secretary, Assistant Treasurer, Sergeant at Arms



Unit owners



Unit Owners

- ▶ Members of the association—name on deed
- ▶ In addition to their unit, purchasers own part of the common elements
- ▶ Owners have a financial obligation to the association and a duty to comply with the governing documents



Unit Owners Rights

- ▶ Use of common elements
- ▶ Participation in governance
 - Stand for election
 - Vote, participate in the process
- ▶ Access to records
- ▶ Attend /speak at meetings
- ▶ Due process
 - Violations of the governing documents



Unit Owners Rights

- ▶ Annual meeting NRS 116.3108
 - Election of board members
 - Ratification of annual budget
- ▶ Special Meetings NRS 116.3108

President

Mail a written petition of at least 10% unit owners signed

Lower % per bylaws

- ▶ Removal Elections NRS 116.31036



Unit Owners Rights

- ▶ Peaceful enjoyment NRS116.320
 - Display the flag
 - Exhibit political signs
 - Make certain improvements
 - Install drought-tolerant landscaping NRS116.330
 - Install wind and solar energy systems
 - Install rolling shutters
 - Install additional locks
 - Install access systems for disabled persons
 - Trash and recycling container storage NRS116.332
 - Transfer rights to tenants (use of the unit & common areas)



Unit Owners Rights

Alleged Violations –Fines

Must be given written notice (applicable provision in governing document)

Detailed of the allegation

Proposed action to cure

Amount of fine

Time/Date/Location of hearing

*photograph if relates to physical condition

Reasonable opportunity to cure



Unit Owners Rights–Warning!

FYI:

If a fine is imposed and violation not cured within 14 days or longer period that the executive board established, the violation shall be deemed a continuing violation

The board may impose an additional fine for each 7–day period that the violation is not cured.

Any additional fine may be imposed without notice

and without an opportunity to be heard



Unit Owners Rights–Tenants/Guests

- ▶ Unless at the time of purchase , the declaration prohibits the unit owner from renting, the association may not prohibit from renting (NRS116.335)
- ▶ Unit owner has the right to have guests
- ▶ Guests are expected to abide by the rules
- ▶ If the unit owner knowingly allows a tenant or guest to violate the governing documents, the association may impose sanctions against the owner, as well as the tenant or guest



Unit Owners Rights – Records

- ▶ Business Records NRS116.31175
 - IF available electronically, no charge
 - Paper copies – \$0.25 per page for the first 10 pages, \$0.10 per page thereafter.
 - Access to review records – \$10/hour
- ▶ Physical location of records
 - Not more than 60 miles from the community
- ▶ Record retention
 - Minutes – forever (termination of the CIC)
 - Other documents – minimum 10 years



Unit Owners Rights – Dispute Resolution

- ▶ Office of the Ombudsman
 - Intervention Affidavit (Form 530a/Form 530)
 - Violations of NRS 116 or association governing documents
 - Statement of Fact (Form 514a)
 - Community Managers or Reserve Study Specialist
 - Alternative Dispute Resolution (ADR–Form 520)
 - Violations of the governing documents
 - Procedures used for setting assessments



Foreclosable Violations

- ▶ The Association can foreclose...
 - Failure to pay assessments
 - Construction Penalties
 - Maintenance and Abatement
 - Health, Safety and Welfare



Unit Owners Responsibilities

- ▶ Read & abide by governing documents
 - Declaration (CC&Rs)
 - Bylaws
 - Rules
 - Any other document governing the association
- ▶ Pay assessments/fines in full and on time
- ▶ Provide resale package NRS116.4109

Resale package–declaration, plat, bylaws, monthly assessments, current budget, summary of reserves

- Obtained from Association
- Demand statement–monthly assessments, any unpaid obligation of unit owner (fees, fines)



CIC/HOA Professionals and Service Providers



Community Association Managers

- ▶ Professional HOA managers
 - Certified by the state
 - 60 hours of basic education in HOA management, plus appropriate testing
 - Background check
 - 2 years of supervision (provisional status)
 - 18 hours of continuing education every 2 years
- ▶ Options
 - Independent
 - Management Company
 - HOA employee



Community Association Managers

NRS 116A.630 Standards of practice for community managers.

Exercise ordinary and reasonable care in the performance of duties

Advise a client to obtain advice from an independent expert relating to matters that are beyond the expertise of the community manager.

Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.

Comply with the directions of a client, unless the directions conflict with the governing documents of the client or the applicable laws



Reserve Study Specialists

- ▶ Registered with the state
- ▶ Approved to conduct reserve studies based on education, experience, reputation
- ▶ Maintain an inventory of reserve study records of each client for at least 6 years

NAC 116A.425 standard of practice



Other Experts & Professionals

- ▶ Attorneys
- ▶ Certified Public Accountants (CPAs)
- ▶ Contractors
- ▶ Landscapers
- ▶ Insurance Agents & Brokers
- ▶ Security Specialists
- ▶ Pest Control Specialists
- ▶ Parliamentarian



The Rules

Overview NRS/NAC

NRS 116 Nevada Revised Statute

- ▶ Common-Interest Communities
- ▶ "Common-Interest Ownership (Uniform Act)," is the set of laws that govern Common-Interest Communities.

NAC 116 Nevada Administrative Code 6/18/2015

- ▶ Regulations based on 116
- ▶ "Management of Common-Interest Community," as the name would imply, regulates how Common-Interest Communities are to be **managed**.

NRS 116A

- ▶ Community Association Managers
- ▶ Reserve Study Specialists

NAC 116A

- ▶ Regulations based on 116A

Governing Documents

- ▶ Covenants, Conditions, & Restrictions–CC&Rs
 - HOA “Constitution”; the general scope of the CIC
- ▶ Articles of Incorporation
 - Creates the corporate structure
- ▶ Bylaws
 - Defines the internal rules of the HOA
- ▶ Rules
 - Specific requirements residents and owners must follow
- ▶ Policies
 - Assessments, fees, fine schedules, interest rates for late payments, any other cost billed to the unit owner



FAQ: NRS vs Governing Documents

- ▶ Work together to provide governance, management, compliance
- ▶ Protect assets, owners, lenders
- ▶ NRS supersedes unless governing documents on subject matter are more stringent than statute
- ▶ Declaration supersedes other governing documents

Governing Documents can be modified by vote of owners

- Owners notified in writing of any changes
- Declaration is primary unless contrary to NRS
- ▶ NRS modified/amended by legislature
- ▶ NAC modified/amended by Division and Commission

A Few Nevada Laws....

- ▶ NRS 116–Common-Interest Communities
- ▶ NRS 116A–Community Association Managers
- ▶ NAC 116, 116A–Nevada Administration Code
- ▶ NRS 81, 82–Corporate Law
- ▶ NRS 38–Alternative Dispute Resolution



A Few More Nevada Laws....

- ▶ NRS 40–Construction Defects
- ▶ NRS 118–Discrimination in Housing
- ▶ NRS 118A–Landlord/Tenant
- ▶ NRS 487–Towing Vehicles
- ▶ City, County, local codes & ordinances



A Few Federal Laws....

- ▶ Fair Housing Act
- ▶ Housing for Older Persons Act
- ▶ Americans with Disabilities Act
- ▶ Telecommunications Act of 1996
- ▶ Virginia Graeme Baker Pool & SPA Safety Act



Office of Ombudsman?

The office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels was created by the State Legislature in the 1997 Session with the passage of [Senate Bill \(SB\) 314](#)

The office was created to assist homeowners and board members in common interest communities to better understand their rights and obligations under the law and their governing documents.

Summary

- ▶ An HOA is a complex business designed to protect and preserve the common elements owned by its members
- ▶ An HOA provides a desirable lifestyle through predictable community standards, amenities
- ▶ Owners must comply with the HOA's governing documents, local ordinances, and state and federal laws



QUESTIONS?

- ▶ Web Site
 - www.red.nv.gov
- ▶ Phone
 - 702.486.4480/877.829.9907/775.687.4280
- ▶ FAX
 - 702.486.4520/775.687.4868
- ▶ E-Mail
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- ▶ Office Locations
 - 2501 East Sahara Ave, Suite 202, Las Vegas, NV 89104
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